Supreme Court of the United States.

No. 397.—October Term, 1905.

The Michigan Central Railroad Company, Appellant, *vs.* Perry F. Powers, Auditor General of the State of Michigan.	Appeal from the Circuit Court of the United States for the Western District of Michigan.

[April 2, 1906.]

This suit was brought in the Circuit Court of the United States for the Western District of Michigan to restrain the respondent, the Auditor General of the State, from enforcing against the appellant the provisions of Act No. 173 of the Michigan laws of 1901, an act to provide for the assessment of the property of railroad and certain other companies, for the levying of taxes thereon by a State board of assessors and for the collection of such taxes. The taxes involved in the suit are those for 1902, resulting from the first assessment under the statute. Prior to the year 1900 the constitution of Michigan contained, in Art. XIV, the following sections applicable to taxation:

"Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from banking, railroad, plank road and other corporations hereafter created.

"Sec. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

"Sec. 12 All assessments hereafter authorized shall be on property at its cash value.

"Sec. 13. The legislature shall provide for an equalization by a State board in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property except that paying specific taxes.

"Sec. 14. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

In that year sections 10, 11 and 13 were amended so as to read as follows:

"Sec. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State board of assessors and for the levying and collection of

taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.

"SEC. 11. The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided*, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.

"SEC. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislatnre may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section 10 of this article."

This change in the constitution was doubtless owing to a decision of the Supreme Court of the State, (*Pingree* v. *Auditor General*, 120 Mich. 95,) of date of April 26, 1899, holding unconstitutional an act passed in 1881 in respect to the assessment and taxation of telegraph and telephone lines. An act 19 of 1899, passed March 15, 1899, and commonly called the "Atkinson bill," was subject to the same objections as the act of 1881 and was evidently regarded as equally unconstitutional. Indeed, though not directly involved in that suit, it was referred to in the opinion of Mr. Justice Montgomery.

The act in controversy (Pub. Acts 1901; Act No. 173) provides that the Board of State Tax Commissioners shall constitute a State Board of Assessors, who are to assess the railroad and certain other corporate property in the State. Section 5 contains the following:

"SEC. 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however*, That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in

which the same may be situate. The term company, corporations or associations, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term 'property having a situs in this State' shall include all the property, real and personal, of the corporations enumerated in this act, owned, used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined."

By sections 6 and 7 the several corporations are required to furnish information as to various matters of fact bearing on the matter of assessment. By section 8 property is to be assessed at its "true cash value" on the second Monday of April of each year, and for the purposes of the assessment the board of assessors is authorized to make personal inspection of the property, to take into consideration the reports filed under the act, and such other evidence as may be obtainable bearing thereon. In respect to the property of railroads running partly within and partly without the State, the board is directed to be guided in respect to the matter of taxation of property within the State by the relation which the number of miles of main track within the State bears to the entire mileage of the main track both within and without the State. By section 10 the board is required to meet at the capitol at Lansing on the third Monday of December, and continue in session so long as may be necessary, not later than January 15 next thereafter, for the purpose of reviewing the assessment roll, and any person or company interested has the right to appear during said period and be heard by the assessors, and they are authorized on such application, or on their own motion, to correct the assessment or valuation. Sections 11 and 12 prescribe the method for fixing the rate of tax, the purpose being to impose upon the railroad property the average rate of taxation levied upon other property upon which ad valorem taxes are assessed. This method is accurately described by counsel for the railroad company in these words:

"The new and peculiar feature of the statute lies in the application to corporate property of a special rate of tax, known as the 'average rate'; which is derived by the following process: The total ad valorem taxes for all purposes, State, county, city, township, village and school district, paid by property in Michigan which is taxed otherwise than under Act 173, are divided by the total assessments of such property, whether made by one or another assessor, and the quotient resulting from this process of division is the rate of tax applied to corporate property under Act 173."

By section 16 the taxes collected from corporations under this act are to "be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State

debt, in the order herein recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund."

After a full hearing upon pleadings and proofs the Circuit Court entered a decree dismissing the bill, 138 Fed. Rep. 223, whereupon the plaintiff appealed directly to this court, under section 5 of the Circuit Court of Appeals act.

Mr. Justice BREWER delivered the opinion of the Court.

The unconstitutionality of a statute may depend upon its conflict with the constitution of the State or with that of the United States. If conflict with the State constitution is the sole ground of attack, the Supreme Court of the State is the final authority, *Merchants' Bank* v. *Pennsylvania*, 167 U. S. 461 and cases cited in the opinion, while in the other case the ultimate decision rests with this court. The validity of this act has not been directly presented to or determined by the State court, but the first attack by the parties interested is made in the Federal court and by this suit, and conflict with both constitutions is alleged. Undoubtedly a Federal court has the jurisdiction, and when the question is properly presented it may often become its duty to pass upon an alleged conflict between a statute and the State constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit and call for consideration and determination. At the same time the Federal courts will be reluctant to adjudge a State statute to be in conflict with the State constitution before that question has been considered by the State tribunals. Especially is this true when the statute is one affecting the revenues of the State, and therefore of general public interest. *Coulter* v. *Louisville & Nashville R. R. Co.*, 196 U. S. 599–609. And this reluctance becomes more imperative when the statute has been before the highest court of the State and a decision rendered upon the assumption that it is valid, and this, although the direct question of validity was not presented nor determined.

In the case at bar the rate of taxation imposed upon the railroad and other corporate property is the average rate of taxation upon other property subject to ad valorem taxes, and that average rate is ascertained by dividing the total tax levy on all such property by the value of the property. In *Board of Education* v. *State Assessors*, 133 Mich. 116, the following case arising under the statute was presented (p. 117):

"This is an application for a mandamus. It sets out, in substance, that the State Board of Assessors, in levying the tax upon the railroad property of this State, has assumed to fix the rate of taxation by dividing the total tax levy on all property other than railroad property

by the value of such other property as determined by the defendant board, by adding to the actual assessed value of such property as fixed by the local assessors and by the Board of State Tax Commissioners, acting under the authority of the law relating to the assessment of taxes, the sum of $296,748,142, thus making the aggregate divisor in determining the rate of taxation that much in excess of the assessed valuation, thereby reducing the rate to be levied upon the railroad property of the State, and thus reducing the amount which the relator would receive as its proportion of the tax assessed against railroad property by a very substantial sum."

This application was sustained, the court holding that the State Board of Assessors had no power to increase the value as returned to them by the local assessors and Board of State Tax Commissioners, and saying (p. 119):

"A fair reading of this language of the statute, we think, leads to the conclusion that the board of assessors has imposed upon it the duty, ministerial in character, of determining by a computation from *data*, which the law provides for placing in its hands, the rate of taxation which other property in the State is subjected to, as it appears by assessment rolls which are supposed to contain an accurate and true assessment of all property at its full cash value."

While this case did not directly determine the constitutionality of the statute, a fair implication is that it was not regarded as obviously in conflict with the State constitution, for in that event the court would scarcely have taken time to consider the validity of proceedings under its authority.

We, therefore, proceed to inquire whether the provisions of this act and the method of taxation therein prescribed are open to any constitutional objection. We have had frequent occasion to consider questions of State taxation in the light of the Federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court in this case (p. 232):

"There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways, nor to compel the States to adopt an ironclad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice. *Bell's Gap Railroad Company* v. *Pennsylvania*, 134 U. S. 232; *Giozza* v. *Tiernan*, 148 U. S. 657, 662; *Adams Express Company* v. *Ohio*, 165 U. S. 194, 228; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *Billings* v. *Illinois*, 188 U. S. 97; *Merchants Bank* v. *Pennsylvania*, 167 U. S. 461; *Kentucky Railroad Tax Cases*, 115 U. S. 321; *Home In-*

surance Company v. *New York State*, 134 U. S. 594; *Gulf, Colorado & Santa Fe Railroad Company* v. *Ellis*, 165 U. S. 150; *Clark* v. *Titusville*, 184 U. S. 329; *American Sugar Refining Company* v. *Louisiana*, 179 U. S. 89; *New York State* v. *Barker*, 179 U. S. 279; *Charlotte etc. Railway Company* v. *Gibbes*, 142 U. S. 386; *Travelers Insurance Company* v. *Connecticut*, 185 U. S. 364; *Kidd* v. *Alabama*, 188 U. S. 730; *Turpin* v. *Lemon*, 187 U. S. 51; *Florida etc. Railroad Company* v. *Reynolds*, 183 U. S. 471."

The first and principal matter of attack is the "average rate." It is contended that the fixing of the rate of taxation is a legislative function; that in ascertaining the average rate by the method described there is no exercise of the legislative judgment, but that it is determined by the action of the various local assessing and taxing boards, who, though charged with no duty of inquiry as to the necessities of the State or the proper rate of taxation of railroad property, are in fact the only officials exercising any discretion and judgment.

There might be a question whether, even if there were a clear delegation of legislative functions to other departments of the State government, it would be void under the Federal Constitution. Whatever, in view of the distinct grant in the Federal Constitution to the President, Congress and the Judiciary of separately the executive, legislative and judicial powers of the nation, may be the power of Congress in the delegation of legislative functions, a very different question is presented when the restrictions of the Federal Constitution are invoked to restrain like action in a State. Crimes against the nation must be prosecuted by indictment, yet a State may proceed by information. Suppose a State by its constitution grants legislative functions to the executive, or to the judiciary, what provision of the Federal Constitution will nullify the action? Will the grant work an abandonment of a Republican form of Government, or be a denial of due process, or equal protection?

But it is unnecessary to enter into a discussion of this question, for in the case at bar there is no abandonment by the legislature of its functions in respect to taxation. The statute prescribes as the rate of taxation upon railroad property the average rate of taxation on all other property subject to ad valorem taxes. It provides the most direct way for ascertaining such average rate, deducing it from a consideration of all the other rates. No authority is given to the local assessors to apply their judgment to the question of the railroad rate. Their authority in respect to the matter of taxation is precisely the same as it was before and independently of this statute. Their duty is to act according to their judgments in respect to local taxes committed to their charge. When they have finished their action, taken, as it must be assumed to have been, in conscientious discharge of the duties assigned, from it by a simple mathematical calculation the average rate of taxation is determined. If the legislature should be convened after they have finished their action and then prescribe

the average rate thus mathematically deduced as the rate of railroad taxation, no question could be made of its validity. It would be obviously a legislative determination of the rate of taxation. Is it any the less a legislative determination that it assumes that the various local officials will discharge their duties honestly and fairly, with reference to local necessities, and independently of the effect upon the railroad rate, and directs that the mathematical computation be made by a board of ministerial officers, and thus made shall become the railroad rate of taxation? Why is it necessary that the legislature be convened to add its formal approval of the integrity of the action of the local officers? May it not entrust the mathematical computation to the State Board of Assessors, and if so, may it not likewise act upon the assumption that the local assessors will discharge their duties with an eye single to those duties and irrespective of the effect upon the railroad rate? It is true there is a possibility that some local board may be actuated by other than a sense of duty to the community for which it is acting and have a thought of the ultimate effect upon the railroad rate. There is always a possibility of misconduct on the part of officials, but legislation would be seriously hindered if it may not proceed upon the assumption of a proper discharge of their duties by the various officials. And it must be remembered that, in view of the vast multitude of local taxing boards, (as stated in one of the briefs of counsel for appellant there are about 1,300 local assessment districts,) the action of any single board could have but little influence upon the railroad rate. Beyond the assumption that these local officers will act from a sense of duty is the further fact that their action affects directly and principally the special communities for which they act, and that, generally speaking, is a sufficient guarantee. As said by Mr. Chief Justice Marshall, in *M'Culloch* v. *Maryland*, 4 Wheat. 316, 428:

"The only security against the abuse of this power, is found in the structure of the Government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation."

And again, in *Providence Bank* v. *Billings*, 4 Pet. 514, 563:

"This vital power may be abused; but the Constitution of the United States was not intended the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."

Maine v. *Grand Trunk Railway Company*, 142 U. S. 217, is worthy of consideration on this question of legislative determination. The legislature of Maine graded the rate of an excise tax imposed upon railroads by the amount of their gross transportation receipts, and provided that when a railroad was partly within and partly without the State the gross receipts charge-

able to the road within the State should be ascertained on the mileage basis. The court below held that as the Grand Trunk Railroad was partly within and partly without the State of Maine, the imposition of the tax was a regulation of commerce, and therefore in conflict with the exclusive power of Congress over interstate and foreign commerce; and rendered judgment for the company.

But this court, reversing that judgment, held that the reference to the receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a reasonable conclusion as to the amount of tax which should be levied, saying (p. 229):

"If the amount ascertained were specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character."

See also *Home Insurance Company* v. *New York*, 134 U. S. 594, and cases cited in the opinion. Of course, a passenger on the Grand Trunk Railroad knew that the fare he was paying was increasing the gross receipts, and therefore indirectly affecting the amount of the tax collectible under the statute. But it was not to be assumed that he would travel and pay fare with that object in view. No more can it be assumed in the present case that the local taxing officers, although knowing that an increase of their local tax levy will increase the tax rate upon railroads, will be led by that knowledge to forget their single duty to the community for which they are acting. No one pays money for the mere sake of compelling others to pay. Some personal advantage must be intended. No more will local tax officers levy a tax upon their neighbors, those who have placed them in position, for the mere sake of increasing the tax burden upon railroads, especially when the local levy is not followed by an equal increase in the amount of the burden cast upon railroads and but a trifling fraction of that increase inures, either directly or indirectly, to the benefit of the taxpayers of the locality. The total value of other property in Michigan subject to ad valorem taxes was, according to the record, in the neighborhood of $1,500,000,000. A tax levy in the city of Detroit for local purposes of $1,500,000 would, therefore, increase the rate of taxation on railroad property only one mill, and that increase would profit Detroit but little, as the railroad tax is appropriated for State purposes only.

It may be laid down as a general proposition that where a legislature enacts a specific rule for fixing a rate of taxation, by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of that rate, there is no abdi-

cation of the legislative function, but, on the contrary, a direct legislative determination of the rate.

Again, it seems more reasonable that the average rate should be fixed by this mathematical computation from the other rates already established than for the legislature to prescribe in advance that which it may hope will be such rate. In the one case the exact average is determined; in the other an estimate is made, which may turn out to be more or less than the average.

While the peculiar method of ascertaining the average rate prescribed by this statute may be new, yet the application of an average rate to the taxation of railroads is not new, nor confined to Michigan. See § 1, Chap. 64, Public Statutes and Session Laws of New Hampshire of January 1, 1901, section first enacted in 1878; Revised Laws of Mass. (1902) vol. 1, Chap. 12, Sec. 93, p. 227; Chap. 14, Secs. 37, 40, pp. 266, 268, incl., taken from laws of 1864, 1865 and 1880; Revised Statutes of Missouri, (1899,) vol. 2, pp. 2175, 2176, Secs. 9363, 9364; Laws of Wisconsin, (1903,) Chap. 315, Secs. 7 to 14, incl., pp. 496, 7, 8 and 9; *Railroad* v. *The State*, 60 N. H. 87; *The State ex rel. Brown* v. *The Missouri Pacific Ry. Co.*, 92 Mo. 137; *Chicago & Alton R. R. Co.* v. *Lamkin*, 97 Mo. 496; *The State ex rel* v. *Metropolitan Street Ry. Co.*, 161 Mo. 189, 199.

We have thus far assumed that there was equity and justice in applying to railroad property the average rate of taxation imposed upon other property. But this assumption is challenged. For instance, the Chicago and Northwestern Railroad Company's property is situate in the upper peninsula of the State of Michigan—

"and yet the average rate of tax applied to its property depends upon, and increases with, the taxes raised on all the counties of the 'Lower Peninsula' of Michigan, and in all the cities, towns, villages and school districts of those counties, for purely local purposes. If Detroit spends $10,000,000 for local government, the Northwestern Railway Company has to pay proportionately more tax on its property in Northern Michigan than if Detroit's tax for local government were $5,000,000; and, beyond that, if Detroit spends $1,000,000 or $5,000,000 for purely domestic or private enterprises, such as gas works, water works, street railways, parks, baths, libraries, etc., the Northwestern Railway's tax on its property (though wholly outside of Detroit—in the 'Upper Peninsula') is proportionately larger on that account.

* * * * * *

"It may well be that (as respects the immediate point) the unity of railroad property would justify a statute requiring a railroad to pay taxes to the State at a rate derived by averaging the taxes, State and local, paid by others in the same taxing jurisdiction; but the question before the court is whether it can be made to pay a tax directly dependent upon, and measured by, the local taxes of counties, cities, towns, villages and school districts where it has no part of its property and no office. Such a plan operates to tax the railroad because of the expenses (public and private) of local communities whose benefits it does not enjoy."

But these considerations appeal mainly to the discretion of the legislature, and do not make against its power. Unless there be some specific provisions in the State constitution compelling other action the State may treat its entire territory as composing but a single taxing district, and deal with all property as within the district and subject to taxation accordingly. There is no magic in county organization, no inherent necessity of dividing the State into small taxing districts. Frequently railroads are separated from other property, assessed by a State board, and the taxes collected therefrom applied to the general purposes of the State. Sometimes, it is true, a portion of the taxes thus collected is distributed *pro rata* to the counties along the lines of the roads, but the power of the State to apply the taxes from railroad property to only State purposes cannot be doubted, and is often exercised. If it may take all the taxes received from railroad property and apply it to general State purposes, and, to that extent, relieve counties in which there is no railroad property from their contribution to the support of the State, it has equal power to say that the average rate of taxation shall be determined, not by the rates upon other property in the immediate localities in which the railroads are located, but by those upon all property wherever situated in the State. We do not mean to hold that cases may not arise in which enforcing this method of taxation works such injustice to a railroad as to call for judicial interference. But we do hold that the mere fact that all the property in the State is taken into account in determining the average rate does not carry with it such proof of injustice and inequality as to compel the courts in all cases to strike the latter down. From the cases that are before us involving this statute it appears that there are many railroad companies in the State, and we may fairly take judicial notice of the fact that the State is traversed in almost every direction by railroads. And while it is possible that there may be a county or two without one yet it is an exception, and to hold that for each railroad the average rate must be determined from the property in the localities immediately contiguous or through which its road passes might well introduce into the matter of taxation a confusion and inequality resulting in far greater injustice than the uniformity established by the present system.

Further, it must be borne in mind that the taxes collected from railroads in Michigan are, by sec. 16 of the act, applicable to State purposes, and while it is doubtless true that the appropriation of these taxes to State purposes diminishes the tax burden which will fall upon other property, yet the case presented is one in which the legislature, taking a class of property, imposes upon it through State authorities a State tax for strictly State purposes. That, so far as the restraints of the Federal Constitution are concerned, it is within the power of a State to separate a particular class of property, subject it to assessment and taxation in a mode

and at a rate different from that imposed upon other property, and apply the proceeds to State rather than to local purposes is not open to question. *Kentucky Railroad Tax Cases*, 115 U. S. 321, is directly in point. By the legislation of Kentucky railroad companies and their property were separated from other property, subjected to different means and methods for purposes of taxation, and upon this the court said (p. 337):

"But there is nothing in the constitution of Kentucky that requires taxes to be levied by a uniform method upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances."

See also *Pittsburgh etc. Railroad Company* v. *Backus*, 154 U. S. 421; *Florida Central etc. Railroad Company* v. *Reynolds*, 183 U. S. 471; *Coulter* v. *Louisville & Nashville Railroad*, 196 U. S. 599.

That no provision is made for a general equalization of railroad with other property in the State does not vitiate the assessment. See *Cummings* v. *National Bank*, 101 U. S. 153, in which the question was distinctly presented and determined, the court saying (p. 161):

"While it may be true that this system of submitting the different kinds of property subject to taxation to different boards of assessors and equalizers, with no common superior to secure uniformity of the whole, may give opportunity for maladministration of the law and violation of the principle of uniformity of taxation and equality of burden, that is not the necessary result of these laws, or of any one of them; and a law cannot be held unconstitutional because, while its just interpretation is consistent with the Constitution, it is unfaithfully administered by those who are charged with its execution. Their doings may be unlawful while the statute is valid."

While there may be no provision for an equalization of railroad with other property, it will be perceived that the statute names the time and place for the sessions of the assessing board, gives to any person or company interested the right to be heard, and also authorizes the board to correct the valuation. So that it cannot be objected that the railroad companies are precluded from a full hearing on the matter of valuation; and, as has heretofore been said by this court, one hearing is sufficient to constitute due process.

Other questions are discussed by counsel in their briefs, but in view of the exhaustive and well-considered opinion of the trial judge, with the general trend of which we concur, it is unnecessary to further extend this discussion. It is sufficient to refer to that opinion for a consideration of those questions. We have noticed those which seem to us paramount and controlling.

It is charged in the bill that there was a systematic undervaluation of other property in the State which resulted in denying to this plaintiff the equal protection of the law. The trial court found against this charge. It is enough to say that generally we accept the finding of a trial court upon a question of fact when the testimony respecting it is conflicting. It may also be said that a legislature is not bound to impose the same rate of tax upon one class of property that it does upon another. As it may exempt all of one class so it may impose a different rate of taxation. It is sufficient if all of the same class are subjected to the same rate and the tax is administered impartially upon them.

Affirmed.

Cases on the docket, numbered from 462 to 487, inclusive, are suits brought by different railroad companies against this appellee, and are submitted on the same record. The same decree will be entered in each of them.

True copy.

Test:

Clerk Supreme Court, U. S.